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# THE MAINE REPORTING PROJECT FOR FINANCIAL INSTITUTIONS

*Fighting Financial Exploitation*

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## EMPLOYEE REFERENCE MANUAL Second Edition



**John Elias Baldacci, Governor**

**A public/private initiative between state agencies and the Maine Association of Community Banks, the Maine Bankers Association and the Maine Credit Union League.**

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## *Fighting Financial Exploitation*

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### EMPLOYEE REFERENCE MANUAL Second Edition

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## TRAINING AGENDA

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### FINANCIAL INSTITUTION EMPLOYEE TRAINING: FINANCIAL EXPLOITATION

#### TRAINING AGENDA

Time: 30 minutes.

#### What is Financial Exploitation of Incapacitated or Dependent Adults?

- **Definition of financial exploitation:** Financial exploitation is the illegal or improper use of an incapacitated or dependent adult or that adult's resources for another's profit or advantage.
  - ❑ This may happen without the victim's consent, or
  - ❑ When the victim is tricked, intimidated or forced into giving consent.
  - ❑ The amount may be small or large. It is evaluated in the context of the victim's financial situation.
  - ❑ An adult who lacks capacity does not have the ability to give valid consent.
- **Definition of incapacitated adult:** An incapacitated adult is any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that the individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual's person, or to the extent that the adult cannot effectively manage or apply that individual's estate to necessary ends.
- **Definition of dependent adult:** A dependent adult is an adult who has a physical or mental condition that substantially impairs the adult's ability to adequately provide for that adult's daily needs. It includes but is not limited to residents of nursing and assisted living facilities.
- Financial exploitation can be devastating for the victim.
- Adults can be victimized by relatives, friends or strangers (con artists).
- Employees of financial institutions are crucial in identifying financial exploitation.
- The reasons victims are reluctant to report exploitation are:
  - ❑ Shame and embarrassment, self blame, fear of retaliation, denial, loyalty to the caregiver, dependence on the caregiver.

- **Types of Exploitation:**

- ☐ Type I -- Family, Acquaintances and Fiduciaries (Personal Relationship).
  - ◆ Includes: theft, mismanagement, forgery, undue influence, misrepresentation and fraud. Is often combined with other forms of abuse and neglect.
  - ◆ Reported to and investigated by Adult Protective Services
- ☐ Type II -- Scam Artists (Confidence Crimes).
  - ◆ Includes person to person confidence crimes, mail fraud, telephone fraud or internet fraud.
  - ◆ Reported to and investigated by law enforcement.

- **What to Look For: Detecting financial exploitation.**

CHART/OVERHEAD: Suspicious Behavior

- **Internal Reporting - Financial institution Procedures**

CHART/OVERHEAD: Employee Action Steps

- ☐ Examples of suspicious situations:
  - ◆ Customer wishes to withdraw unusually large amount of cash.
  - ◆ Customer accompanied by another person who is withdrawing a large amount of cash from the customer's account.
  - ◆ Third party is claiming to act for customer (customer may/may not be present).
- ☐ Employee action steps when faced with a suspicious situation.
  1. Check reason for withdrawal.
  2. Check authorization and documentation to act for customer.
  3. Provide Confidence Crime/Financial Exploitation Alert form.
  4. Get photographic evidence.
  5. Consult with security/Oral report to security.
  6. Interview victim alone if possible or ask customer to speak with security/Oral report to security.
  7. Emergency response.

**Remember:**

- Time is the enemy of the financial exploiter.
- Justify your concern and emphasize the commitment of your financial institution to protecting customers.
- Empathize with the customer and validate their feelings.
- Ask clear, non-threatening factual questions.
- Tell customers they aren't alone (people are reluctant to reveal exploitation).
- Don't say that you are concerned simply because a customer is elderly.

- Don't let anyone else speak for the customer. This is a "red flag" that something is wrong.
  
- ❑ Security decides whether and where to report each case.

- **Case Discussion**

**CASE 1: MR. FREEMAN**

*You notice that an elderly gentleman, Mr. Freeman, makes frequent trips to the financial institution and is meticulous about tracking his finances. He never withdraws more than \$100 at a time from his account. At some point, Mr. Freeman's visits are less frequent and he seems confused about his account. On this day, he is accompanied by another person. That person begins to carry out Mr. Freeman's account transaction with a check for a cash withdrawal of \$1,000 and mentions that Mr. Freeman is interested in arranging for him to become his power of attorney. He comments that he is Mr. Freeman's nephew and is currently providing valuable personal care.*

☒ What is suspicious about this transaction?

☒ How should you react?

☒ Think of possible reactions Mr. Freeman might have to your concern?

☒ How would you handle these reactions? How would you handle the young adult if he tries to intervene?

**CASE 2: MRS. ANDERSON**

*Mrs. Anderson enters the financial institution. She looks to be about 70 years old. She is accompanied by a middle-aged man who is impeccably dressed. You have never seen her with this person before. At the teller window, she presents you with a check for \$5,000 in cash. You notice that she is somewhat nervous and that she is staring at you in a strange fashion. The man with her is standing at the teller window and clearly watching what is taking place.*

☒ What might be happening here?

☒ How should you react?

☒ What if the individual tries to leave?

## KEY TERMS USED IN THIS MANUAL

<ul style="list-style-type: none"><li>• <b>FINANCIAL EXPLOITATION:</b></li></ul> <p>When a person illegally or improperly uses the resources of an incapacitated or dependent adult for the profit or advantage of someone other than the adult.</p> <ul style="list-style-type: none"><li>• <b>INCAPACITATED ADULT:</b></li></ul> <p>Any adult who by reason of mental illness, mental deficiency, physical illness or disability lacks sufficient understanding or capacity to make or communicate responsible decisions about him/herself or effectively manage or apply his/her estate to necessary ends.</p> <ul style="list-style-type: none"><li>• <b>DEPENDENT ADULT:</b></li></ul> <p>Any adult who has a physical or mental condition that substantially impairs the adult's ability to adequately provide for that adult's daily needs. It includes but is not limited to residents of nursing and assisted living facilities</p> <ul style="list-style-type: none"><li>• <b>FINANCIAL INSTITUTION:</b></li></ul> <p>Any bank or credit union, or branch of that bank or credit union, within Maine participating in the Project that may become aware of suspected financial exploitation.</p> <ul style="list-style-type: none"><li>• <b>SECURITY:</b></li></ul> <p>Any designated department <i>or</i> individual with full or part-time responsibility for investigating and reporting possible instances of financial exploitation to outside authorities.</p>	<ul style="list-style-type: none"><li>• <b>EMPLOYEE:</b></li></ul> <p>Anyone at the financial institution with a full or part time job, other than security, who may have contact with customers and their financial records. Includes tellers, customer service representatives, managers, computer operators or other staff.</p> <ul style="list-style-type: none"><li>• <b>ADULT PROTECTIVE SERVICES (APS):</b></li></ul> <p>Adult Protective Services (APS) is a program within the Department of Health and Human Services, the State agency mandated to receive and investigate reports of suspected abuse, neglect or exploitation of incapacitated and dependent adults.</p> <ul style="list-style-type: none"><li>• <b>APS INTAKE LINE (1-800-624-8404):</b></li></ul> <p>Statewide 24 hour toll free intake number for reports of financial exploitation.</p> <ul style="list-style-type: none"><li>• <b>A. G.'S CONSUMER LINE (1-207-626-8800)</b></li></ul> <p>Receives reports of consumer fraud Monday through Friday, 9 a.m. to 5 p.m.</p> <ul style="list-style-type: none"><li>• <b>LOCAL LAW ENFORCEMENT:</b></li></ul> <p>The police department, sheriff's office or State Police in the city or town where the financial institution is located. Directly receives reports of scams. May be brought into the investigation following APS involvement.</p> <ul style="list-style-type: none"><li>• <b>SUSPECT:</b></li></ul> <p>Anyone who reasonably appears to be engaging in financial exploitation. May be a family member or acquaintance, fiduciary or scam artist.</p>
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## SECTION I

### OVERVIEW

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*Mr. J. was a regular customer at his financial institution. He went in once a week to cash a check for a small amount. In one week a teller noticed he came in three different times. He was accompanied by a woman the teller had not seen before. On each occasion, Mr. J. cashed increasingly large checks. The final check cleaned out his account.*

*The following week, the teller called Adult Protective Services in great distress. She asked if Mr. J. could be helped. He had come into the financial institution to cash his usual small check, and she had to tell him that his account was empty. Mr. J. did not seem to remember the transactions he had made the previous week. When he discovered he had no money, he stood in the lobby and cried.*

*The teller said that she had felt that there was something wrong, but had not known what to do. Had she been aware of the warning signs of financial exploitation, the appropriate employee response to these situations and the protocol for reporting suspicions, this exploitation might have been prevented.*

***The Maine Reporting Project for Financial Institutions*** is a collaborative effort to combat financial exploitation of incapacitated and dependent adults. The Maine Reporting Project is a public/private initiative between state agencies and the Maine Association of Community Banks, the Maine Bankers Association and the Maine Credit Union League. Through voluntary participation in the Project, financial institutions and their employees can help to prevent financial exploitation.

***Financial exploitation*** is the illegal or improper use of an incapacitated or dependent adult's resources by a family member, friend, or stranger. People over sixty are the most rapidly growing segment of our population and many victims of financial exploitation are elders. Older people may be very vulnerable to abuse, neglect and exploitation, and unscrupulous people increasingly target them as victims. The

media and average citizen tend to focus on the most visible tragedy: physical abuse. But one of the most devastating forms of abuse is financial exploitation. In Maine, most of the Adult Protective Services' caseload of financial exploitation involves people known to the victim, often relatives or friends. The Attorney General's Office also sees an increasing number of con artist scams against elders. Many more cases go unreported, or are not discovered until the victim has been stripped of all assets.

***This manual*** is a quick reference guide developed especially for employees of participating financial institutions. It describes common situations, gives information on recognizing the symptoms of exploitation, and outlines the appropriate response of the employee in suspicious circumstances.



**Employees of financial institutions** understand this is a real problem. They are in a unique position to have early knowledge of financial abuse. Employees with customer contact often see situations develop where they believe that the customer is at risk. But, until recently, many employees did not know how to report these cases to public authorities while appropriately safeguarding customer confidentiality. Many customers, therefore, were not offered the help available to them.

**The Reporting and Investigation Protocol** is a way for employees of participating financial institutions to identify and report financial exploitation without breaching customer confidentiality. Your financial institution has agreed to participate in the Project. You can help protect your customers by reporting suspicions of exploitation to the designated person at your financial institution.

**Other resources.** Through the Project, employees can become aware of services for incapacitated and dependent adults that neither they nor their customers knew existed. Some adults can become vulnerable to exploiters simply because they need practical help. For example, services like home delivered meals, homemaker services, grocery deliveries and, when no trusted family member is available, trained volunteers to help with financial management may be arranged. These, and many other services, make the adult less dependent on and vulnerable to exploitation or abuse by others.

*Miss G., age 92, had been hospitalized for a year due to a fractured hip and bedsores. A neighbor, who had been handling her finances during this time, died.*

*Miss G. agreed to the neighbor's 23 year old daughter, Loren, being named on her accounts. Loren was paid \$50 a month for her help. When Miss G. discovered Loren had been writing checks for her own purchases, she called Adult Protective Services. She wanted to press charges for the theft of \$3,000, and to have her money returned.*

*Miss G.'s financial institution, with her consent, helped with the investigation by providing copies of missing statements and 29 canceled checks showing personal use of the elder's money by Loren. As the money had been withdrawn by a signatory of a joint account the manager stated the financial institution could not refund the money. Although the District Attorney did not prosecute, the Adult Protective Services caseworker met with Mrs. G., Loren, and her father. Loren's family agreed to repay the money in return for a written statement from Miss G. that she would not pursue legal action. Miss G.'s nephew is now helping her with bill paying.*

## SECTION II

### RECOGNIZING FINANCIAL EXPLOITATION

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*When the financial institution notified Mrs. C. that her savings account was overdrawn because of her frequent use of an ATM card, Mrs. C. said that she did not know what an ATM card was. Mrs. C. had rarely left her house and had not visited the financial institution for several years due to her increasingly frail health. A visiting nurse reported the case to Adult Protective Services. The financial institution was contacted during the investigation. Adult Protective Services and security discovered that Mrs. C. was being exploited by a young man, Alan, a neighbor's son.*

*Alan had asked Mrs. C. to sign an ATM card application when she was intoxicated. He took the signed application to the financial institution, claiming to be acting for her. No one questioned this claim or called Mrs. C. to verify her wishes. Alan retrieved the ATM card from the mail, made up a PIN number and began making almost daily withdrawals of \$100 to \$300. In three months he had depleted her life savings. Mrs. C. was no longer able to pay her medical bills.*

*Adult Protective Services and her financial institution helped Mrs. C. to cancel the ATM card. A report of theft was filed with the District Attorney, and a warrant was put out for Alan's arrest.*

#### A. DEFINING FINANCIAL EXPLOITATION

##### 1. WHAT IS FINANCIAL EXPLOITATION?

Under the Adult Protective Services Act, financial exploitation occurs when a person illegally or improperly uses the resources of an incapacitated or dependent adult for the profit or advantage of someone other than the adult. Financial exploitation can range from stealing small amounts of cash, to persuading a person to sign over a house or sign a will against his or her wishes or to the misuse of a power of attorney or an order of guardianship or conservatorship.

##### 2. CONSENT AND CAPACITY

Financial exploitation can happen in three ways:

- a) Without the **consent** of the incapacitated or dependent adult, or
- b) If the incapacitated or dependent adult is **tricked, intimidated** or **forced** into giving consent.

Adults must be fully informed of and authorize any transactions made in their names. Consent must be freely given. Any attempts to trick adults, or to force or coerce them into giving consent, means that this is not valid consent.

- c) If the incapacitated or dependent adult is ***too confused to be able to give valid consent.***

An adult must be able to understand the situation and the implications and consequences of any choice to have "capacity" to give valid consent to a transaction.

Capacity is a legal issue decided by a court of law. Employees should presume that customers have capacity and are responsible for making decisions about their own finances, unless specific documentation is provided stating otherwise.

Customers who appear very confused or disoriented may need help, however. Even if you do not suspect financial exploitation you may report your concerns to Security. Security can refer these customers to Adult Protective Services. A caseworker can then assess the

situation, evaluate the capacity of the adult and arrange for services if necessary.

### **3. THE RIGHT TO CHOOSE**

It is not financial exploitation if an adult with capacity willingly consents to a transaction. Mrs. A., for example, willingly gives her grandson several thousand dollars as a wedding present.

Sometimes the onlooker may think that the adult is making a poor choice. Mrs. D., for example, a seventy year old woman with a low income, repeatedly bails out her cocaine addicted granddaughter. To some this may appear a bad idea, yet she is fully competent and understands the consequences of this action. She has the right to spend her money in this way because ***adults of all ages who have capacity have the right to make their own decisions.***

## **B: TYPES OF FINANCIAL EXPLOITATION**

There are two main categories of financial exploitation:

- I. Exploitation by people ***known*** to the incapacitated or dependent adult (family members, friends or fiduciaries).
- II. Exploitation by ***strangers*** (scam artists).

The type of exploitation varies with the type of suspect. Family members, acquaintances and fiduciaries, who have ongoing relationships with the victim, will typically use different methods than the scam artist, who is a stranger.

Exploitation by people known to the incapacitated or dependent adult is reported to Adult Protective Services (APS). Adult Protective Services will investigate the report and provide a range of services designed to end the abuse.

Exploitation by strangers, similar to one time crimes like burglary, robbery or mugging, is always reported to and investigated by law enforcement, regardless of the age or capacity of the victim.

## **I. FAMILY, ACQUAINTANCE AND/OR FIDUCIARY EXPLOITATION (PERSONAL RELATIONSHIP EXPLOITATION)**

Most family members and friends provide vital assistance to adults in need of assistance. Without this help many adults would not be able to remain safely at home.

However, some family members and friends exploit incapacitated and dependent adults. These victims are particularly vulnerable to exploitation from someone they know, trust and love. When victims are exploited by family members, and friends, they are also often physically or emotionally abused. Sometimes their needs are neglected when their money is spent by the exploiter. Fiduciaries (for example people acting as powers of attorney or court appointed guardians) can also exploit these adults.

Victims may be reluctant to admit they are being exploited, especially if the exploiter is someone they know. They may feel embarrassed or ashamed that a family member is abusing them. They may fear retaliation, be dependent on the abuser for care, or worry that they will be placed in a nursing home if they admit to being abused and the caregiver is removed. Some adults may also be confused or demented and unable to care for themselves. These adults may be unaware that they are being exploited and abused, and unable to find help due to their condition.

Family members, friends and fiduciaries who exploit incapacitated or dependent adults frequently use the following methods.

### **1. MISMANAGING INCOME OR ASSETS**

This involves either the willful or non-willful misuse of the victim's finances.

The ***willful*** misuse of an incapacitated or dependent adult's money happens without the victim's knowledge. For example, a father allowed his son to become a cosigner on a joint account to help him pay his bills. The son did pay some bills. He also wrote out large checks to cover his own expenses. The father then discovered his money was gone.

In ***non-willful*** misuse, the caregiver may believe she is using the victim's money appropriately or may not understand financial transactions. For instance, a 50 year old mentally retarded woman cashed her mother's social security checks and gave the money to friends.

### **2. SIGNING CHECKS OR DOCUMENTS WITHOUT THE VICTIM'S CONSENT**

Forging, altering, and cashing checks or withdrawal slips to obtain money from the victim's checking or savings account may be involved. For example, the victim signs a blank savings withdrawal slip and the perpetrator later fills in a large amount. The suspect may also forge the victim's name on ATM card applications, credit card applications, and deeds to gain control of the victim's assets. For instance, a neighbor "helping" an elderly woman with her banking transactions forged her signature on an ATM card application and made up a PIN number. He withdrew approximately \$250 a day until her savings of \$6,000 were depleted.

**3. CHARGING EXCESSIVE FEES FOR RENT OR CAREGIVER SERVICES**

An incapacitated or dependent adult may be charged excessive fees for rent, transportation, meals, laundry, personal care, or other caregiver services by relatives, "friends" or neighbors. For example, an elderly woman moved in with her daughter and was charged \$2,500 rent per month for a single room and shared living space, where she felt unwelcome. In another case, an elder was charged an excessive amount every week by a neighbor to pick up a single small bag of groceries.

**4. THEFT OF MONEY OR PROPERTY**

Money or property taken without the prior knowledge and consent of an incapacitated or dependent adult is exploitation regardless of the amount taken. A son taking \$50 of his mother's cashed social security check each month from her bureau drawer without her consent is financially exploiting her by stealing. This "small" amount causes a substantial loss because of her limited income.

**5. OBTAINING MONEY OR PROPERTY BY UNDUE INFLUENCE, MISREPRESENTATION OR FRAUD**

The incapacitated or dependent adult may "give" the perpetrator money or property, but it is a choice based on fear or deception.

**Undue influence** involves any coercion, whether physical, mental or moral, which subverts the sound judgment and genuine desire of an individual. Physical violence may be used, but the use of coercion includes withholding food or medication, isolating the adult from friends, relatives or services, confining the adult, or depriving them of the company of loved ones.

A daughter, for example, threatened to have her mother put in a nursing home against her will, and not allow visits with her grandchildren,

unless she was given access to her mother's life savings.

**Misrepresentation or fraud** occurs when the suspect seeks to obtain the consent of the adult to give or sign over assets by misrepresenting the intent of the transaction.

An elderly woman, for example, signed the deed to her house over to a friend. The elder believed that she would be able to remain in her own home until she died. Her friend promised to care for her and, in return, have the house after she died. The "friend" sold the house almost immediately after the deed was signed over to her. The elder had to move to a nursing home as she had nowhere else to live. She had no legal recourse because she had no written agreement that her friend would care for her in her own home.

Caretakers may also tell victims that they need to write checks for food and/or medical treatment when the caretaker is using the money for his or her own benefit. Often, if the caregiver is a substance abuser, which is frequently the case, the victim's money is used to finance the caregiver's addiction.

## II. SCAM ARTIST EXPLOITATION

There are also numerous situations in which adults, particularly elders, are the victims of scams by strangers. The victimization rate for fraud is very high among older people. Con artists often select older people because some may seem more trusting or appear to be lonely. Some elders may give the impression that they are easily confused by fast talk, or appear to have time to listen to the "pitch" of the con artist.

Many older people also have relatively easy access to their savings, whereas many younger people have committed their money to raising families, educating children, or paying for their homes. Some con artists keep records and lists of those they have previously conned. Because the people on these lists have been successfully swindled in the past, they are considered "leads" for future swindles.

No one is immune to a con artist. People of all ages and backgrounds have been swindled. Con artists are successful for several reasons. Many con artists have the abilities of professional actors and can convincingly present themselves to their potential victims. Most people believe they are too clever to be swindled. Older adults can become complacent if they believe their years of experience will help them detect a con artist. Con games are very difficult to detect. There are two reasons for this. First, frauds are committed without violence. People (even police) in the vicinity will normally be unaware that a fraud is being committed. Also, frauds are seldom reported to authorities. There are several reasons for low reporting. Many victims are embarrassed to report that they have been swindled, some are not aware that they have been conned, and others may conclude that there is nothing the law enforcement can do to recover their money or other assets.

Con games are very difficult to investigate and prosecute. People who swindle others cannot easily be traced. That is why it is so critical for employees of financial institutions and security

to intercept cons as quickly as possible by alerting law enforcement.

Employees of financial institutions can help defeat fraud by educating themselves and their customers in advance about common scams. All scams fall into three basic categories: 1) person-to-person confidence scams, 2) mail fraud, 3) telemarketing fraud or telefraud, and 4) internet fraud.

### 1. PERSON-TO-PERSON CONFIDENCE SCAMS

It is not possible to cover all the different types of confidence games. Some of the most popular and successful are "the bank examiner," "the pigeon drop," "the home repairman," and the "fake accident ploy." All these require person-to-person contact with the victim (although initial contact may be made by a phone call.) All have variations, but usually the victim is conned into believing they are doing a good deed, or offered a deal that is too good to be true.

**The Bank Examiner** scam entails the con artist convincing the victim he is an official of some kind. The "examiner" tells the elder that he is trying to trap a dishonest bank employee, and asks him or her to withdraw a large amount of money and give it to him so that he can check that the notes are genuine. The con will tell the victim that the money will be redeposited immediately, or will hand him back an envelope. Of course the money is never redeposited, or the envelope is full of useless paper.

**The Pigeon Drop** is usually run by females. One con approaches the intended victim (usually an elder) with a "found package" containing a large sum of money and a note. The note gives the impression that the money represents the proceeds from illegal activities and is unlikely to be claimed. The con asks for advice on what to do. Typically, her accomplice then appears and claims that she works for an attorney. She announces that they can split the

money three ways after a waiting period of 30 days. The accomplice suggests that they all make a "good faith" payment to prove that they won't be tempted to spend the money before the waiting period expires. The cons place what appears to be \$2,000 or more of their own money in the "found package." They take the victim to his or her bank for a withdrawal that goes into the package as well.

The accomplice drives the victim to the "attorney's office" to deposit the cash for safekeeping. Once inside, the con suddenly has to make a phone call or use the bathroom. To avoid any suspicion she gives the victim the "found package" to hold. When the con fails to return, the victim discovers that he or she is holding an identical looking package containing nothing but blank paper.

**The Home Repairman** arrives at the victim's door and tells her that her roof, gutters, and/or driveway are in a bad, if not dangerous condition. He explains that he can do the job very cheaply as he has material left over from another job nearby.

If the work is done, it is done badly. For example, the cons put black oil on a driveway, so that it looks good for a while, and leave with payment. Usually no repairs were even needed.

## **2. MAIL FRAUD**

This includes phony contests or sweepstakes; selling nonexistent or misrepresented investments in annuities, stocks, securities, precious metals or real estate; touting worthless or dangerous medical cures; soliciting money for phony charities, promoting participation in fraudulent work-at-home schemes; and selling "dream vacation" packages that turn into nightmares. This list is not all-inclusive, but it represents the variety of mail frauds that can victimize elders and younger people as well. In some instances of mail fraud the victim is asked to place a phone call to confirm their winnings.

The victim may then be asked for financial information, for example account or credit card numbers, to "check that we are talking to the

right prizewinner." Charges can then be made to the victim's account without their knowledge.

## **3. TELEMARKETING FRAUD**

This is a way of defrauding people over the phone by swindlers who seek money in exchange for services or products. Products are either never sent, or are priced far above their true value.

Telefraud operations employ callers who use rehearsed, high-pressure sales pitches. They convince people to buy overpriced products, invest in fictitious enterprises, participate in contests to win worthless prizes, or contribute to phony charities.

Often victims are enticed to seek out the telefraud organization by advertisements for services placed in magazines or newspapers. Sometimes 800 or 900 numbers are given for victims to call. When the victim places the call they get a hard sell or are asked to call another number for confirmation. In 900 frauds the victim is asked to stay on the phone for long periods while "facts are verified." The con does not inform the victim that the call is charged at a high rate. The con gets a percentage of the cost of every call.

## **4. INTERNET FRAUD**

The internet and other advances in technology have changed the way criminals engage in fraud. One common scam is known as "phishing." The "phishing" scam begins with an e-mail, purportedly from the victim's financial institution asking the victim to update a password or re-submit personal financial information. The victim's financial institution's logo and other identifying characteristics are presented in a manner that makes the e-mail appear legitimate. The victim is urged to respond immediately through a link to a phony website. The phony website appears to be a website of the victim's financial institution. When the victim provides passwords, account numbers or other personal information, the

information is used to gain access to accounts and use of the victim's credit card number.

Individuals should never provide personal information, including account information, unless they initiated the contact and are sure they are dealing with their financial institution.

## **SYMPTOMS OF FINANCIAL EXPLOITATION SUSPICIOUS BEHAVIOR**

**A customer may be financially exploited if they are:**

- **Accompanied by a stranger who encourages them to withdraw a large amount of cash.**
- **Accompanied by a family member or other person who seems to coerce them into making transactions.**
- **Not allowed to speak for themselves or make decisions.**
- **With an acquaintance who appears too interested in their financial status.**
- **Nervous or afraid of the person accompanying them.**
- **Giving implausible explanations about what they are doing with their money.**
- **Concerned or confused about "missing funds" in their accounts.**
- **Unable to remember financial transactions or signing paperwork.**
- **Fearful that they will be evicted, or institutionalized, if money is not given to a caregiver.**
- **Neglected or receiving insufficient care given their needs or financial status.**
- **Isolated from other family members or support by a family member or acquaintance.**
- **Financial exploitation is often found in combination with other forms of abuse.**

*Abuse, neglect or exploitation of an incapacitated or dependent adult should always be reported to Adult Protective Services.*



## TYPES OF FINANCIAL EXPLOITATION

PERSONAL RELATIONSHIP	SCAMS
<p style="text-align: center;"><b>SUSPECT</b> is known to the victim. May be family member, friend, acquaintance or fiduciary.</p>	<p style="text-align: center;">SUSPECT is a stranger to the victim and employs person-to person scam, and/or mail fraud, telefraud, or internet fraud.</p>
<p style="text-align: center;"><b>VICTIM</b> An incapacitated or dependent adult</p>	<p style="text-align: center;"><b>VICTIM</b> Any individual, regardless of age or capacity</p>
<p>SUSPECT acts or fails to act in a way that causes monetary or property loss to the victim and gain to self. <b>FINANCIAL EXPLOITATION</b> is sometimes combined with other forms of abuse &amp; neglect and may include:</p> <p style="text-align: center;">Mismanagement of income or assets</p> <p style="text-align: center;">Signing checks or documents without the victim's consent</p> <p style="text-align: center;">Charging excessive fees for rent or caregiving services</p> <p style="text-align: center;">Stealing money or property</p> <p style="text-align: center;">Obtaining money or property by undue influence, misrepresentation or fraud.</p>	<p>SUSPECT employs a person-to-person scam, and/or engages in mail fraud or telefraud to obtain money. Common scams are:</p> <p style="text-align: center;"><i>The Bank Examiner</i> Victim is enlisted by fake bank examiner to withdraw money as part of government investigation into teller fraud</p> <p style="text-align: center;"><i>The Pigeon Drop</i> The con (usually a woman) claims to be willing to split found money with victim if victim makes a "good faith" payment</p> <p style="text-align: center;"><i>The Fake Accident Ploy</i> The con gets the victim to withdraw money on the pretext that the victim's child is in the hospital</p> <p style="text-align: center;"><i>The Bogus Vacation</i> The victim gets a call saying they have won a free or cheap vacation. They must give out account information to verify the deal.</p>

## **SYMPTOMS OF FINANCIAL EXPLOITATION SUSPICIOUS ACCOUNT ACTIVITY**

- **Unusual volume of account activity:**

Frequent account changes from one branch/ financial institution to another.  
Change in pattern of withdrawals (e.g. several in one day), or unusually large amounts.  
Large withdrawals or transfers from recently opened joint accounts.

- **Account activity inconsistent with customer's usual habits:**

Large withdrawals from previously inactive account or savings account.  
Frequent withdrawals made through ATMs, especially if customer is physically frail and has not used ATM previously.  
Regular rent or utility payments by check cease abruptly.  
Stable, single beneficiary trusts are revoked.  
Distribution provisions are altered to require payments to third parties.

- **Suspicious signatures on checks or other documents, like credit card applications:**

Customer's signature appears forged.  
Customer's signature appears correct but amounts are written in a different handwriting. Use of different pens or inks may indicate that something is wrong.

- **Sudden increases in incurred debt when customer appears unaware of transactions:**

Loans or second mortgages are obtained.  
Large credit card or reserve credit debts.

- **A fiduciary or other person begins handling the customer's affairs, withdrawing funds with no apparent benefit to the customer.**

- **Account statements and canceled checks are no longer sent to the customer's home (verify that this is the customer's wish).**

- **Implausible reasons for account activity are given either by the customer or the person accompanying them.**

## SECTION III

### RESPONDING TO FINANCIAL EXPLOITATION

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*Tina was addicted to heroin and lived with her three children, boyfriend and Mrs. D., her 94 year old great-grandmother. Mrs. D. was becoming very confused and had trouble remembering things. Tina began to help Mrs. D. with bill paying. Mrs. D.'s financial institution, in a small rural town, saw a sudden increase in checks written to Tina, some with signatures that tellers noticed did not look "right." Financial institution security contacted Adult Protective Services.*

*Account statements and canceled checks found in Mrs. D.'s home revealed that 3,000 checks in small amounts had been written. Seventy-five of the checks had been forged by Tina and four of her friends. All were arrested but because Mrs. D. refused to testify against her great-granddaughter the case was not prosecuted.*

*Adult Protective Services helped Mrs. D. to confront Tina, and worked with the financial institution to set up a system where her accounts were protected from exploitation. The financial institution assists with monthly utility bill paying, and has a flag on the account to check with Mrs. D. in suspicious circumstances. When Tina came to the financial institution recently to cash a check written to herself the manager called Mrs. D. to see if the check was legitimate.*

*Tina still lives with her great-grandmother and helps with her care.*

The system for reporting and investigating financial exploitation also differs with the relationship of the suspect to the incapacitated or dependent adult. Personal relationship exploitation (family, friends and fiduciaries) is reported to Adult Protective Services, who may sometimes also involve law enforcement. Scam artist exploitation is always reported to and investigated by law enforcement.

At your financial institution, a designated manager or security officer will decide where to make the report. You need only report your suspicions internally.

Employees need to understand the correct procedure for each type of situation to gather and provide the necessary information. The

immediate response of the teller or customer services representative is crucial.

Employee awareness is the key to detecting financial exploitation. Like a person removing sunglasses in a dark room, when employees are alert to the symptoms of financial exploitation, they suddenly see cases that they would not have noticed before.

If confronted with a suspicious situation the employee should perform the following action steps in a courteous manner.

**REMEMBER:** The longer you delay, the more likely the customer will recognize that something is wrong, or the suspect will be frightened off.

**1. Learn the reason for large transactions**

This is especially important if the withdrawal is unusually large for the customer concerned. Ask the customer, *not* anyone with him or her, the reason for the withdrawal or change in activity. If the person with the customer does not let him or her speak, this is a red flag.

**2. Check authorization to act for customer**

If the person with the customer claims to be acting for them (or if they come in alone claiming to act for the customer) check all documentation. Exploiters often lie about their position or powers. The suspect may tell you that the customer cannot visit the financial institution him or herself and that he is just helping out. Explain politely that you need verification of the customer's wishes. Some exploiters claim to be guardians or to possess a Power of Attorney. Always check documentation to be sure that the person claiming to be acting for the customer is authorized to do so. Signature cards *must always* be checked. If the signature or transaction appears suspicious, a telephone call can be made to the customer for verification.

**3. Provide a Fraud Alert Form**

Warn customers of the dangers of carrying cash. Ask them to read and sign the fraud alert (confidence crime and/or financial exploitation) form. Tell them this is a financial institution service for their protection. Explain the form (you may want to read it aloud) and take time to answer questions.

**4. Get photographic evidence if possible**

Photographic evidence of scams, which are carried out by strangers to the customer, is critical. A surveillance photograph may be the only way to identify the perpetrator.

Similarly, in family, acquaintance or fiduciary exploitation, a surveillance photograph can effectively disprove a suspect's claim that he never went to the financial institution to cash the forged checks or to make withdrawals. Many experienced financial exploiters will attempt to avoid the surveillance cameras. Try to position the suspect so that the camera can get a clear image. Call the suspect over to you if necessary.

**5. Ask the customer to speak with security**

If the customer, or anyone accompanying the customer, objects to your actions, politely repeat that the financial institution policy is intended to protect customers. Ask the customer to speak with security who can explain the reasons for your actions.

**6. Consult with security/management**

Your financial institution will establish clear guidelines regarding the stage at which security *must* be notified about suspicious circumstances. However, you should feel free to consult with senior officers or security any time you feel uneasy. Your financial institution may also want you to fill in an "Incident/Suspected Abuse form," even if you were satisfied with the responses given by the customer.

**7. Notify security AT ONCE if you feel the customer is in immediate danger**

Notify security *immediately* (before the customer leaves the financial institution) if you feel there is a significant threat to their safety.

## **EMPLOYEE RESPONSE: ACTION STEPS**

- 1. Learn the reason for large transactions or withdrawals.**
- 2. Check authorization and documentation to act for customer.**
- 3. Provide Confidence Crime/Financial Exploitation Alert form.**
- 4. Get photographic evidence (and be able to describe suspect).**
- 5. Consult with security at any time.**
- 6. Ask customer to speak with security.**
- 7. Notify security or law enforcement AT ONCE if you believe the customer is in immediate danger.**

### **REMEMBER:**

- Time is the enemy of the financial exploiter.**
- Justify your concern and emphasize the commitment of your financial institution to protecting customers.**
- Empathize with the customer and validate their feelings.**
- Ask clear, non-threatening factual questions.**
- Tell customers they aren't alone (people are reluctant to reveal exploitation).**
- Don't say that you are concerned simply because a customer is elderly.**
- Don't let anyone else speak for the customer. This is a "red flag" that something is wrong.**

### THREE STEP REPORTING

<b>PERSONAL RELATIONSHIP EXPLOITATION</b>	<b>CONFIDENCE CRIMES (SCAMS)</b>
<p><b>1. Employee always makes oral report to security/designated manager no later than beginning of next business day.</b></p> <p><b>Employee does not contact APS.</b></p>	<p><b>1. Employee makes oral report to security/ management (preferred).</b></p> <p><b>Emergency procedure: Employee makes report to law enforcement prior to notifying security / management.</b></p>
<p><b>2. Security/ management makes immediate oral report to APS.</b></p> <p><b>Security/ management provides written report to APS in 48 hours.</b></p> <p><b>Contents of Report to APS</b></p> <ul style="list-style-type: none"> <li>• Name, age (estimate) address &amp; telephone number of victim</li> <li>• Name, relationship &amp; address of suspect (if known)</li> <li>• Description of suspicious circumstances</li> <li>• Origin of the report: institution name, branch, address and reporter name</li> <li>• Other agency(ies) involved (if any)</li> </ul>	<p><b>2. Security/ management makes immediate report to law enforcement, unless emergency situation.</b></p> <p><b>Contents of Report to Law Enforcement</b></p> <ul style="list-style-type: none"> <li>• Name, age (estimate) address and telephone number of victim</li> <li>• Full description of suspect</li> <li>• Description of incident</li> <li>• Location of incident (financial institution, branch, &amp; address)</li> <li>• Description of suspects car &amp; license number (if known)</li> </ul>
<p><b>3. Written report filed by security/ management for internal review</b></p>	<p><b>3. Written report filed by security/ management for internal review</b></p>

## SECTION IV

### FREQUENTLY ASKED QUESTIONS ABOUT ADULT PROTECTIVE SERVICES

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*Joe, in his seventies, contacted Adult Protective Services to complain that his daughter was taking and cashing his Social Security check, and that his credit cards were at their limit. He requested that his financial institution be contacted during the investigation. The same day, the vice president of the financial institution also made a report of suspected financial exploitation. Employees had noticed that Joe's health seemed to be getting worse, and that he often appeared worried and upset. They also realized there had been a dramatic increase in activity in the joint account Joe held with his daughter. The financial institution had closed the account, which was seriously overdrawn, and had notified Joe by mail.*

*The Adult Protective Services caseworker found that Joe had never seen this letter. His daughter was continuing to write checks on the account. Joe was also about to lose his home because his mortgage payments had not been made. Joe was denied access to his car, his mail was intercepted, and his daughter was threatening to take his medications away from him. He was being emotionally abused and financially exploited by his daughter and her boyfriend.*

*The financial institution vice president met with Joe and the caseworker. The financial institution provided Joe with a printout of all activity in his account and the accompanying charges. The financial institution agreed to waive the charges for bounced checks, and helped Joe open a new account in his own name. Joe took out a restraining order against his daughter, accompanying the caseworker to court. The caseworker arranged for emergency food deliveries until Joe was provided with transportation to a local senior meal site. She also arranged for a volunteer money manager to help Joe with his finances.*

#### 1. WHAT IS ADULT ABUSE?

Adult abuse is generally defined as an act or omission (failure to act) by another person that results in serious physical or emotional injury or the financial exploitation of an incapacitated or dependent adult.

**Abuse** includes actions which result in bodily harm, pain or mental distress. Examples of abuse are:

- pushing, hitting, shaking, pulling hair
- tying to a bed or chair or locking in a room
- forcing into sexual activity
- giving the wrong medicine or too much medicine on purpose
- denying visits with friends or family
- name calling, harassment or verbal threats.

**Neglect** is a failure to provide care and services when an adult is unable to care for him/herself. Neglect may be at the hands of someone else or it may be self neglect. Neglect includes the failure to provide:

- adequate shelter, clothing or food
- personal care
- medical attention or necessary medication
- necessities such as glasses, dentures, hearing aides, walkers.

**Exploitation** is the illegal or improper use of an adult's money or property for another person's profit or gain. Examples of exploitation are:

- forcing an adult to change a will or sign over control of assets
- misusing the adult's pension or social security check
- Stealing money or property.

## **2. WHO CAN REPORT ADULT ABUSE?**

The law states that "any person" may make a report to Adult Protective Services if they have reasonable cause to suspect that an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation. Some professionals as well as some other categories of individuals are required to report suspected occurrences of abuse, neglect or exploitation of incapacitated adults.

In Maine, personnel from financial institutions are not mandated reporters but they are clearly authorized to report all types of adult abuse.

## **3. WHAT ABOUT CONFIDENTIALITY AND LIABILITY?**

Whatever the nature of the report, or the relationship of the reporter to the victim, Adult Protective Services will keep the identity of the reporter confidential. Financial institutions and their employees can feel confident their identity will not be revealed by Adult Protective Services, except in very limited circumstances to law enforcement, a District Attorney or by court order.

**No individual or financial institution making a report of adult abuse is liable in any civil action because of a report of suspected abuse, neglect or exploitation if it was made in good faith. All reports are presumed to have been made in good faith.**

## **4. WHAT IS ADULT PROTECTIVE SERVICES?**

Adult Protective Services is a program within the Department of Health and Human Services and is the program mandated to receive and investigate reports of suspected abuse, neglect and exploitation of incapacitated or dependent adults. Adult Protective Services receives reports on a 24 hour basis. Caseworkers then investigate reports of abuse. If allegations are confirmed, services will be offered to the victim with the goal of ending or alleviating the abuse. In some circumstances, where serious abuse has occurred or exploitation of an incapacitated adult is substantiated, cases are referred to law enforcement or the district attorney for possible prosecution.

Adult Protective Services can include the coordination of:

- Financial assistance;



- Evaluation of risk and safety planning;
- Medical services and therapies;
- Substance abuse treatment;
- Home health services;
- Mental health services;
- Homemakers and chore services;
- Home delivered meals;
- Transportation and education;
- Emergency food or fuel;
- Socialization and supervision;
- Housing; and
- Legal services.

# APPENDICES

## APPENDIX A

### ADULT PROTECTIVE SERVICES ACT

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#### **Chapter 958-A: ADULT PROTECTIVE SERVICES ACT (HEADING: PL 1981, c. 527, @1 (new))**

##### **Subchapter 1: GENERAL PROVISIONS (HEADING: PL 1981, c. 527, @1 (new))**

#### **§3470. Title**

This Act may be cited as the Adult Protective Services Act. [1981, c. 527, § 2 (new).]

#### **§3471. Declaration of policy and legislative intent**

The Legislature recognizes that many adult citizens of the State, because of incapacitation or dependency, are unable to manage their own affairs or to protect themselves from abuse, neglect or exploitation. Often these persons cannot find others able or willing to render assistance. The Legislature intends, through this Act, to establish a program of protective services designed to fill this need and to ensure its availability to all incapacitated and dependent adults who are faced with abuse, neglect, exploitation or the substantial risk of abuse, neglect or exploitation. It is also the intent of the Legislature to authorize only the least possible restriction on the exercise of personal and civil rights consistent with the person's need for services and to require that due process be followed in imposing those restrictions. Any requirements for disclosure of information contained in this chapter do not supersede federal law if federal law prohibits the disclosure of such information in the manner as set forth in this chapter. [2003, c. 653, §1 (amd).]

#### **§3472. Definitions**

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1981, c. 527, §2 (new).]

**1. Abuse.** "Abuse" means the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or sexual exploitation; or the intentional, knowing or reckless deprivation of essential needs. "Abuse" includes acts and omissions. [2003, c. 653, §2 (amd).]

**2. Adult.** "Adult" means any person who has attained 18 years of age or who is a legally emancipated minor. [2003, c. 653, §2 (amd).]

**2-A. Bureau.** "Bureau" means the Department of Health and Human Services, Bureau of Elder and Adult Services. [2003, c. 653, §2 (amd); c. 689, Pt. B, §6 (rev).]

**3. Caretaker.** "Caretaker" means any individual or institution who has or assumes the responsibility for the care of an adult. [1981, c. 527, §2 (new).]

**4. Commissioner.** "Commissioner" means the Commissioner of Health and Human Services or a designated representative in the geographical area in which the person resides or is present. [2005, c. 397, Pt. A, §21 (amd).]

**5. Department.** [2005, c. 397, Pt. A, §22 (rp).]

**6. Dependent adult.** "Dependent adult" means an adult who has a physical or mental condition that substantially impairs the adult's ability to adequately provide for that adult's daily needs. "Dependent adult" includes, but is not limited to, any of the following: [2003, c. 653, §2 (amd).]

A. A resident of a nursing home licensed or required to be licensed under section 1817;

[2003, c. 653, §2 (new).]

B. A resident of a facility providing assisted living services licensed or required to be licensed pursuant to section 7801; or

[2003, c. 653, §2 (new).]

C. A person considered a dependent person under Title 17-A, section 555.

[2003, c. 653, §2 (new).]

**7. Emergency.** "Emergency" refers to a situation in which: [2003, c. 653, §2 (amd).]

A. The incapacitated or dependent adult is in immediate risk of serious harm;

[1981, c. 527, §2 (new).]

B. The incapacitated or dependent adult is unable to consent to services that will diminish or eliminate the risk; and

[2003, c. 653, §2 (amd).]

C. There is no person legally authorized to consent to emergency services.

[2003, c. 653, §2 (amd).]

**8. Emergency services.** "Emergency services" refers to those services necessary to avoid serious harm. [2003, c. 653, §2 (amd).]

**9. Exploitation.** "Exploitation" means the illegal or improper use of an incapacitated or dependent adult or that adult's resources for another's profit or advantage. [2003, c. 653, §2 (amd).]

**10. Incapacitated adult.** "Incapacitated adult" means any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that that individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual's person, or to the extent the adult can not effectively manage or apply that individual's estate to necessary ends. [2003, c. 653, §2 (amd).]

**11. Neglect.** "Neglect" means a threat to an adult's health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these. [1983, c. 313, §2 (amd).]

**12. Protective services.** "Protective services" means services that separate incapacitated or dependent adults from danger. Protective services include, but are not limited to, social, medical and psychiatric services necessary to preserve the incapacitated or dependent adult's rights and resources and to maintain the incapacitated or dependent adult's physical and mental well-being. [2003, c. 653, §2 (amd).]

Protective services may include seeking guardianship or a protective order under Title 18-A, Article 5. [2003, c. 653, §2 (amd).]

**13. Serious harm.** "Serious harm" means: [2003, c. 653, §2 (amd).]

A. Serious physical injury or impairment;

[1989, c. 259, §3 (amd).]

B. Serious mental injury or impairment that now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including, but not limited to, severe anxiety, depression or withdrawal, untoward aggressive behavior or similar serious dysfunctional behavior;

[2003, c. 653, §2 (amd).]

C. Sexual abuse or sexual exploitation; or

[2003, c. 653, §2 (amd).]

D. Serious waste or dissipation of resources.

[2003, c. 653, §2 (new).]

**14. Serious injury.** [1989, c. 259, §4 (rp).]

**15. Sexual abuse or sexual exploitation.** "Sexual abuse or sexual exploitation" means contact or interaction of a sexual nature involving an incapacitated or dependent adult without that adult's informed consent. [2003, c. 653, §2 (amd).]

### **§3473. Authorizations**

**1. General.** The department shall act to: [2003, c. 653, §3 (amd).]

A. Protect incapacitated and dependent adults from abuse, neglect and exploitation and protect incapacitated and dependent adults in circumstances that present a substantial risk of abuse, neglect or exploitation;

[2003, c. 653, §3 (amd).]

B. Prevent abuse, neglect or exploitation of incapacitated and dependent adults;

[2003, c. 653, §3 (amd).]

C. Enhance the welfare of these incapacitated and dependent adults; and

[1981, c. 527, §2 (new).]

D. Promote self-care wherever possible.

[1981, c. 527, §2 (new).]

**2. Reports.** The department shall: [2003, c. 653, §4 (amd).]

A. Receive, promptly investigate and determine the validity of reports of alleged abuse, neglect or exploitation or the substantial risk of abuse, neglect or exploitation;

[1991, c. 711, §3 (amd).]

B. Take appropriate action, including providing or arranging for the provision of appropriate services and making referrals to law enforcement; and

[2003, c. 653, §4 (amd).]

C. Petition for guardianship or a protective order under Title 18-A, Article 5, when all less restrictive alternatives have been tried and have failed to protect the incapacitated adult.

[1981, c. 527, §2 (new).]

**3. Appearance of designated employees in Probate Court.** The commissioner may designate employees of the department to represent the department in Probate Court in: [2003, c. 653, §5 (amd).]

A. Matters relating to the performance of duties in uncontested guardianship or conservatorship or termination of guardianship or conservatorship proceedings; and

[2003, c. 653, §5 (amd).]

B. Requests for emergency guardianships arising from the need for emergency medical treatment or placement in assisted living programs, residential care facilities or nursing facilities or for orders necessary to apply for or preserve an estate in emergency situations.

[2003, c. 653, §5 (amd).]

#### **§3474. Records; confidentiality, disclosure**

**1. Confidentiality of adult protective records.** All department records which contain personally identifying information and are created or obtained in connection with the department's adult protective activities and activities related to an adult while under the jurisdiction of the department are confidential and subject to release only under the conditions of subsections 2 and 3. Within the department, the records shall be available only to and used by authorized departmental personnel and legal counsel for the department in carrying out their functions. [1981, c. 527, §2 (new).]

**2. Optional disclosure of records.** The department may disclose relevant information in the records to the following persons, with protection for the identity of reporters and other persons when appropriate: [2003, c. 653, §6 (amd).]

A. An agency responsible for investigating a report of adult abuse, neglect or exploitation when the investigation is authorized by statute or by an agreement with the department;

[2003, c. 653, §6 (amd).]

B. An advocacy agency conducting an investigation under chapter 961, United States Public Law 88-164, Title I, Part C or United States Public Law 99-319, except as provided in subsection 3, paragraph D;

[1989, c. 7, Pt. N, §1 (amd).]

C. A physician treating an incapacitated or dependent adult who the physician reasonably suspects may be abused, neglected or exploited;

[2003, c. 653, §6 (amd).]

D. An incapacitated or dependent adult named in a record who is reported to be abused, neglected or exploited or the caretaker of the incapacitated or dependent adult;

[2003, c. 653, §6 (amd).]

E. A person having the legal responsibility or authorization to care for, evaluate, treat or supervise an incapacitated or dependent adult;

[1987, c. 714, §3 (amd).]

F. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the research and the commissioner or the commissioner's designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent must be obtained by the department prior to the contact;

[1989, c. 858, §6 (amd).]

G. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857;

[2003, c. 653, §6 (amd).]

H. A relative by blood, marriage or adoption of an incapacitated or dependent adult named in a record; and

[2003, c. 653, §6 (amd).]

I. A member of a panel appointed by the department or the Office of the Attorney General to review the death or serious injury of an incapacitated or dependent adult or a child.

[2003, c. 653, §6 (new).]

**3. Mandatory disclosure of records.** The department shall disclose relevant information in the records to the following persons: [2003, c. 653, §7 (amd).]

A. The guardian ad litem of an incapacitated or dependent adult named in a record who is reported to be abused, neglected or exploited;

[1981, c. 527, §2 (new).]

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court. Access must be limited to in camera inspection unless the court determines that disclosure of the information is necessary for the resolution of an issue pending before it;

[2003, c. 653, §7 (amd).]

C. A grand jury on its determination that access to those records is necessary in the conduct of its official business; and

[RR 1991, c. 2, §80 (cor).]

D. An advocacy agency conducting an investigation under chapter 961, United States Public Law 88-164, Title I, Part C or United States Public Law 99-319, regarding a developmentally disabled person or mentally ill person who is or who, within the last 90 days, was residing in a facility rendering care or treatment, when a complaint has been received by the agency or there is probable cause to believe that that individual has been subject to abuse or neglect, and that person does not have a legal guardian or the person is under public guardianship. The determination of which information and records are relevant to the investigation is made by agreement between the department and the agency.

[RR 1991, c. 2, §81 (cor).]

### **§3475. Penalty for violations**

A person who knowingly violates a provision of this chapter commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. Any licensed, registered, accredited or certified professional who has been adjudged to have violated a provision of this chapter must, in addition to any financial penalty, be reported by the court or the department to the appropriate professional licensing organization, registration board, accrediting unit or facility. [2003, c. 653, §8 (amd).]

### **§3476. Spiritual treatment**

**1. Treatment not considered abuse, neglect or exploitation.** An incapacitated or dependent adult shall not be considered to be abused, neglected or exploited solely because treatment is by spiritual means by an accredited practitioner of a recognized religious organization. [1981, c. 527, § 2 (new).]

**2. Treatment to be considered if requested.** When medical treatment is authorized, under this chapter, treatment by spiritual means by an accredited practitioner of a recognized religious organization may also be considered if requested by the incapacitated or disabled adult or his caretaker. [1981, c. 527, § 2 (new).]

Subchapter 1-A: REPORTING OF ABUSE, NEGLECT OR EXPLOITATION (HEADING: PL 1981, c. 705, @2 (new))

**§3477. Persons mandated to report suspected abuse, neglect or exploitation**

**1. Report required.** The following persons immediately shall report to the department when the person has reasonable cause to suspect that an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation: [2003, c. 653, §9 (rpr).]

A. While acting in a professional capacity:

- (1) An allopathic or osteopathic physician;
- (2) A medical intern;
- (3) A medical examiner;
- (4) A physician's assistant;
- (5) A dentist;
- (6) A chiropractor;
- (7) A podiatrist;
- (8) A registered or licensed practical nurse;
- (9) A certified nursing assistant;
- (10) A social worker;
- (11) A psychologist;
- (12) A pharmacist;
- (13) A physical therapist;
- (14) A speech therapist;
- (15) An occupational therapist;
- (16) A mental health professional;
- (17) A law enforcement official;
- (18) Emergency room personnel;
- (19) An ambulance attendant;
- (20) An emergency medical technician;
- (21) Unlicensed assistive personnel;
- (22) A humane agent employed by the Department of Agriculture, Food and Rural Resources; or
- (23) A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications;

[2003, c. 653, §9 (rpr).]

B. Any person who has assumed full, intermittent or occasional responsibility for the care or custody of the incapacitated or dependent adult, regardless of whether the person receives compensation; or

[2003, c. 653, §9 (rpr).]

C. Any person affiliated with a church or religious institution who serves in an administrative capacity or has otherwise assumed a position of trust or responsibility to the members of that church or religious institution, while acting in that capacity, regardless of whether the person receives compensation.

[2003, c. 653, §9 (rpr).]

The duty to report under this subsection applies to individuals who must report directly to the department. A supervisor or administrator of a person making a report under this section may not impede or inhibit the reporting, and a person making a report may not be subject to any sanction for making a report. Internal procedures to facilitate, ensure confidentiality of and apprise supervisors and administrators of reports may be established as long as those procedures are not inconsistent with this chapter. [2003, c. 653, §9 (rpr).]

**2. Reports.** Reports regarding abuse, neglect or exploitation must be made immediately by telephone to the department and must be followed by a written report within 48 hours if requested by the department. The reports must contain the name and address of the involved adult; information regarding the nature and extent of the abuse, neglect or exploitation; the source of the report; the person making the report; that person's occupation; and where that person can be contacted. The report may contain any other information that the reporter believes may be helpful. [2003, c. 653, §10 (amd).]

**3. Confidentiality in case of treatment of individual suspected of causing abuse, neglect or exploitation.** This section does not require any person acting in that person's professional capacity to report when all of the following requirements are met: [2003, c. 653, §11 (amd).]

A. The factual basis for knowing or suspecting abuse, neglect or exploitation of an adult covered under this subchapter derives from the professional's treatment of the individual suspected of causing the abuse, neglect or exploitation;

[1981, c. 705, Pt. E, §2 (new).]

B. The treatment was sought by the individual for a problem relating to the abuse, neglect or exploitation; and

[1981, c. 705, Pt. E, §2 (new).]

C. In the opinion of the person required to report, the abused, neglected or exploited adult's life or health is not immediately threatened.

[1981, c. 705, Pt. E, §2 (new).]

**4. Confidentiality in case of treatment of individual suspected of being abused, neglected or exploited.** This section does not require any person acting in that person's professional capacity to report when all of the following requirements are met: [2003, c. 653, §12 (new).]

A. The factual basis for knowing or suspecting abuse, neglect or exploitation of an adult covered under this subchapter derives from the professional's treatment of the individual suspected of being abused, neglected or exploited;

[2003, c. 653, §12 (new).]

B. The treatment was sought by the individual for a problem relating to the abuse, neglect or exploitation; and

[2003, c. 653, §12 (new).]

C. In the opinion of the person required to report, the individual is not incapacitated and the individual's life or health is not immediately threatened.

[2003, c. 653, §12 (new).]

### **§3478. Mandatory reporting to medical examiner for post-mortem investigation**

A person required to report cases of known or suspected abuse or neglect, who knows or has reasonable cause to suspect that an adult has died as a result of abuse or neglect, shall report that fact to the appropriate authority as provided in section 3026. An adult shall not be considered to be abused or neglected solely because he was provided with treatment by spiritual means by an accredited practitioner of a recognized religious organization. [1983, c. 343, § 1 (amd).]

### **§3479. Optional reporting**

Any person may make a report to the department when that person has reasonable cause to suspect an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation. [2003, c. 653, §13 (amd).]

**1. Dependent.** [1989, c. 858, §12 (rp).]

**2. Incapacitated.** [1989, c. 858, §12 (rp).]

**3. Suspected incapacity.** [1989, c. 858, §12 (rp).]

### **§3479-A. Immunity from liability**

**1. Reporting and proceedings.** A person participating in good faith in reporting under this subchapter, or in a related adult protection investigation or proceeding, is immune from any civil liability that might otherwise result from these actions, including, but not limited to, any civil liability that might otherwise arise under state or local laws or rules regarding confidentiality of information. [2003, c. 653, §14 (amd).]

**2. Presumption of good faith.** In a proceeding regarding immunity from liability, there shall be a rebuttable presumption of good faith. [1981, c. 705, Pt. E, §2 (new).]

Subchapter 2: INVESTIGATIONS AND PROTECTIVE SERVICES (HEADING: PL 1981, c. 527, @1 (new))

### **§3480. Investigations**



**1. Subpoenas and obtaining criminal history.** The commissioner, his delegate or the legal counsel for the department may:

A. Issue subpoenas requiring persons to disclose or provide to the department information or records in their possession that are necessary and relevant to an investigation of a report of suspected abuse, neglect or exploitation or to a subsequent adult protective proceeding, including, but not limited to, health care information that is confidential under section 1711-C.

(1) The department may apply to the District Court and Probate Court to enforce a subpoena.

(2) A person who complies with a subpoena is immune from civil or criminal liability that might otherwise result from the act of turning over or providing information or records to the department; and

[2003, c. 653, §15 (amd).]

B. Obtain nonconviction data and other criminal history record information under Title 16, section 611, which he deems relevant to a case of alleged abuse, neglect or exploitation.

[1981, c. 527, §2 (new).] [2003, c. 653, §15 (amd).]

**2. Confidentiality.** Information or records obtained by subpoena shall be treated in accordance with section 3474. [1981, c. 527, §2 (new).]

**3. Right of entry and access to records of licensed facilities.** The department and any duly designated officer or employee of the department have the right to enter upon and into the premises of any facility licensed under sections 1817 and 7801 in order to obtain information necessary and relevant to an investigation of a report of suspected abuse, neglect or exploitation or to a subsequent adult protective proceeding. The department has access to all records in the facility's possession that are relevant to the investigation of a report of suspected abuse, neglect or exploitation and any subsequent adult protective proceeding and is not required to issue a subpoena to the facility before obtaining access to the records. [1995, c. 696, Pt. B, §4 (new).]

#### **§3480-A. Confidential communications**

The confidential quality of communications under section 1711-C, Title 24-A, section 4224 and Title 32, sections 1092-A and 7005 is abrogated to the extent allowable under federal law in relation to required reporting or cooperating with the department in an investigation or other protective activity under this chapter. Information released to the department pursuant to this section must be kept confidential and may not be disclosed by the department except as provided in section 3474. [2003, c. 653, §16 (new).]

#### **§3481. Providing for protective services with the consent of the person; withdrawal of consent; care taker refusal**

When it has been determined that an incapacitated or dependent adult is in need of protective services, the department shall immediately provide or arrange for protective services, provided that the adult consents. [1981, c. 527, §2 (new).]

**1. Consent.** If an incapacitated or dependent adult does not consent to the receipt of protective services, or if he withdraws consent, the service shall not be provided. [1981, c. 527, §2 (new).]

**2. Consent refused.** When a private guardian or conservator of an incapacitated adult who consents to the receipt of protective services refuses to allow those services to be provided to the incapacitated adult, the department may petition the Probate Court for removal of the guardian pursuant to Title 18-A, section 5-307, or for removal of the conservator pursuant to Title 18-A, section 5-415. When a caretaker or guardian of an incapacitated adult who consents to the receipt of protective services refuses to allow those services to be provided to the incapacitated adult, the department may petition the Probate Court for temporary guardianship pursuant to Title 18-A, section 5-310-A or for a protective arrangement pursuant to Title 18-A, section 5-409. [1993, c. 652, §8 (amd).]

#### **§3482. Providing for protective services to incapacitated adults who lack the capacity to consent**

If the department reasonably determines that an incapacitated adult is being abused, neglected or exploited and lacks capacity to consent to protective services, the department may petition the Probate Court for guardianship or conservatorship, in accordance with Title 18-A, section 5-601. The petition must allege specific facts sufficient to show that the incapacitated adult is in need of protective services and lacks capacity to consent to them. [1981, c. 527, §2 (new).]

#### **§3483. Emergency intervention; authorized entry of premises; immunity of petitioner**

**1. Action.** When the court has exercised the power of a guardian or has appointed the department temporary guardian pursuant to Title 18-A, section 5-310-A, and the ward or a caretaker refuses to relinquish care and custody to the court or to the department, then at the request of the department, a law enforcement officer may take any necessary and reasonable

action to obtain physical custody of the ward for the department. Necessary and reasonable action may include entering public or private property with a warrant based on probable cause to believe that the ward is there. [1993, c. 652, §9 (amd).]

**2. Liability.** No petitioner shall be held liable in any action brought by the incapacitated adult if the petitioner acted in good faith. [1981, c. 527, §2 (new).]

#### **§3484. Payment for protective services**

At the time the department makes an evaluation of the case reported, it must be determined, according to regulations set by the commissioner, whether the incapacitated or dependent adult is financially capable of paying for the essential services. To the extent that assets are available to the incapacitated or dependent adult, ward or protected person, the cost of services must be borne by the estate of the person receiving those services. [2003, c. 653, §17 (amd).]

#### **§3485. Reporting abuse**

Upon finding evidence indicating that a person has abused, neglected or exploited an incapacitated or dependent adult, resulting in serious harm, the department shall notify the district attorney or law enforcement agency. [2003, c. 653, §18 (amd).]

#### **§3486. Cooperation**

All other state and local agencies as well as private agencies receiving public funds shall cooperate with the department in rendering protective services on behalf of incapacitated and dependent adults. [1981, c. 527, § 2 (new).]

#### **§3487. Adoption of standards**

The department shall adopt standards and other procedures and guidelines with forms to insure the effective implementation of this chapter. [1981, c. 527, § 2 (new).]

Subchapter 3: PLACEMENT AND THERAPEUTIC SERVICES FOR DEPENDENT AND INCAPACITATED ADULTS WHO ARE NOT MENTALLY RETARDED (HEADING: PL 2003, c. 653, @19 (rp))

#### **§3488. Placement (REPEALED)**

#### **§3489. Levels (REPEALED)**

#### **§3490. Therapeutic services (REPEALED)**

#### **§3491. Training team (REPEALED)**

#### **§3492. Rules (REPEALED)**

Subchapter 4: RULES (HEADING: PL 2003, c. 653, @20 (new))

#### **§3493. Rules**

The department may adopt rules in accordance with Title 5, chapter 375, subchapter 2-A to carry out this chapter. [2003, c. 653, §20 (new).]

## APPENDIX B

### CONFIDENTIAL FINANCIAL RECORDS ACT

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#### Chapter 16: CONFIDENTIAL FINANCIAL RECORDS

##### §161. Definitions; exemptions

**1. Definitions.** [2001, c. 667, Pt. A, §5 (rp).]

**1-A. Definitions.** As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 44, §11 (amd); c. 182, §16 (amd); c. 262, Pt. B, §2 (new).]

A. "Affiliate" has the same meaning as in section 131, subsection 1-A.

[2001, c. 262, Pt. B, §2 (new).]

B. "Credit union authorized to do business in this State" has the same meaning as in section 131, subsection 12-A.

[2001, c. 262, Pt. B, §2 (new).]

C. "Customer" means any person as that term "person" is defined in section 131, subsection 30 who utilized or is utilizing any service of a financial institution authorized to do business in this State or a credit union authorized to do business in this State or for whom a financial institution authorized to do business in this State or a credit union authorized to do business in this State is acting or has acted as a fiduciary in relation to an account maintained in the person's name. In addition, "customer" means any person who provides information to a financial institution authorized to do business in this State or a credit union authorized to do business in this State in an attempt to utilize any service of that financial institution or credit union.

[2001, c. 262, Pt. B, §2 (new).]

D. "Financial institution authorized to do business in this State" has the same meaning as in section 131, subsection 17-A.

[2001, c. 262, Pt. B, §2 (new).]

E. "Financial records" means the originals or copies of records held by a financial institution authorized to do business in this State or a credit union authorized to do business in this State or their agents or affiliates pertaining to a customer's relationship with the financial institution or credit union and includes information derived from such records.

[2001, c. 262, Pt. B, §2 (new).]

F. "Supervisory agency" means:

- (1) The Federal Deposit Insurance Corporation;
- (2) The Office of Thrift Supervision;
- (3) The Federal Home Loan Bank Board;
- (4) The National Credit Union Administration;
- (5) The Federal Reserve Board;

- (6) The Office of the Comptroller of the Currency;
- (7) The Bureau of Financial Institutions within the Department of Professional and Financial Regulation;
- (8) The Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation;
- (9) The Bureau of Insurance within the Department of Professional and Financial Regulation;
- (10) The Office of Securities within the Department of Professional and Financial Regulation; and
- (11) The United States Securities and Exchange Commission.

[2001, c. 262, Pt. B, §2 (new).]

**2. Exemptions.** This chapter does not prohibit: [2001, c. 262, Pt. B, §3 (amd).]

A. The preparation, examination, handling or maintenance of any financial records by any officer, employee or agent of a financial institution authorized to do business in this State or credit union authorized to do business in this State having custody of such records or the examination of such records by a certified public accountant engaged by the financial institution or credit union to perform an independent audit;

[2001, c. 262, Pt. B, §3 (amd).]

B. The examination of any financial records by, or the furnishing of financial records by a financial institution authorized to do business in this State or credit union authorized to do business in this State to, any officer, employee or agent of a supervisory agency for use solely in the exercise of the duties of the officer, employee or agent;

[2001, c. 262, Pt. B, §3 (amd).]

C. The publication of data furnished from financial records relating to customers when the data can not be identified to any particular customer or account;

[2001, c. 262, Pt. B, §3 (amd).]

D. The making of reports or returns required under the United States Internal Revenue Code, Chapter 61, including the submission of information concerning interest earned on accounts, investigatory activity authorized by the United States Internal Revenue Code and any use to which the reports or returns would be subjected once submitted;

[2001, c. 262, Pt. B, §3 (amd).]

E. Furnishing information permitted to be disclosed under the Uniform Commercial Code concerning the dishonor of any negotiable instrument;

[1977, c. 416 (new).]

F. The exchange in the regular course of business of credit information between a financial institution authorized to do business in this State or credit union authorized to do business in this State and other financial institutions or credit unions or commercial enterprises, directly or through a consumer reporting agency;

[2001, c. 262, Pt. B, §3 (amd).]

G. Any disclosure of financial records made pursuant to section 226;

[2001, c. 262, Pt. B, §3 (amd).]

H. The examination of the financial records authorized by Title 36, section 112 or section 176-A, subsection 4;

[1989, c. 880, Pt. E, §1 (amd).]

I. Any disclosure of financial records made pursuant to Title 22, section 16, 17 or 4314;

[2001, c. 262, Pt. B, §3 (amd).]

J. Any disclosure of financial records made under the Federal Currency and Foreign Transactions Reporting Act, Public Law 91-508, 31 United States Code, Section 5311, et seq., as amended;

[2001, c. 262, Pt. B, §3 (amd).]

K. The examination or furnishing of any financial records by a financial institution authorized to do business in this State or credit union authorized to do business in this State to any officer, employee or agent of the Treasurer of State for use solely in the exercise of that officer's, employee's or agent's duties under Title 33, chapter 41;

[2001, c. 262, Pt. B, §3 (amd).]

L. The exchange of financial records between a financial institution authorized to do business in this State or credit union authorized to do business in this State and a consumer reporting agency or between or among a financial

institution authorized to do business in this State or credit union authorized to do business in this State and its subsidiaries, employees, agents or affiliates, including those permitted under Title 10, chapter 210 or 15 United States Code, Chapter 41;

[2001, c. 262, Pt. B, §3 (amd).]

M. The sharing of information to the extent permitted by the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001). This paragraph is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24; or

[2001, c. 262, Pt. B, §3 (new).]

N. The sharing of financial records with affiliates other than as permitted under paragraphs L and M.

[2001, c. 262, Pt. B, §3 (new).]

PL 1977, Ch. 416, § (NEW).  
PL 1977, Ch. 696, §115 (AMD).  
PL 1981, Ch. 501, §28 (AMD).  
PL 1981, Ch. 706, §1 (AMD).  
PL 1983, Ch. 784, §1-3 (AMD).  
PL 1985, Ch. 311, §2-4 (AMD).  
PL 1985, Ch. 647, §1 (AMD).  
PL 1985, Ch. 668, §1 (AMD).  
PL 1985, Ch. 819, §A14 (AMD).  
PL 1989, Ch. 368, §1-3 (AMD).  
PL 1989, Ch. 880, §E1 (AMD).  
PL 1995, Ch. 86, §1 (AMD).  
PL 1995, Ch. 419, §4,5 (AMD).  
PL 1997, Ch. 315, §10-12 (AMD).  
PL 1997, Ch. 398, §L6 (AMD).  
PL 1997, Ch. 453, §1 (AMD).  
PL 1997, Ch. 508, §A3 (AFF).  
PL 1997, Ch. 508, §B1 (AMD).  
PL 1999, Ch. 127, §A21 (AMD).  
PL 1999, Ch. 218, §1 (AMD).  
PL 2001, Ch. 44, §14 (AFF).  
PL 2001, Ch. 44, §6 (AMD).  
PL 2001, Ch. 262, §B1-3 (AMD).  
PL 2001, Ch. 667, §A5 (AMD).

## **§162. Disclosure of financial records prohibited; exceptions**

A financial institution authorized to do business in this State or credit union authorized to do business in this State or its affiliates may not disclose to any person, except to the customer or the customer's duly authorized agent, any financial records relating to that customer of that financial institution or credit union unless: [2001, c. 262, Pt. B, §4 (amd).]

**1. Authorized disclosure.** The customer has authorized disclosure to the person; [1997, c. 537, §1 (amd); §62 (aff).]

**2. Disclosure in response to legal process.** The financial records are disclosed in response to a lawful subpoena, summons, warrant or court order that meets the requirements of section 163; [2001, c. 211, §1 (amd).]

**3. Disclosure in response to a request by the Department of Health and Human Services.** The financial records are disclosed in response to a request for information by the Department of Health and Human Services for purposes related to establishing, modifying or enforcing a child support order; or [2001, c. 211, §1 (amd); 2003, c. 689, Pt. B, §6 (rev).]

**4. Disclosure in response to a request by the Department of Labor.** The financial records are disclosed in response to a notice of levy issued by the Department of Labor pursuant to Title 26, section 1233. [2001, c. 211, §2 (new) .]

PL 1977, Ch. 416, § (NEW) .  
PL 1997, Ch. 537, §1 (AMD) .  
PL 1997, Ch. 537, §62 (AFF) .  
PL 2001, Ch. 211, §1,2 (AMD) .  
PL 2001, Ch. 262, §B4 (AMD) .  
PL 2003, Ch. 689, §B6 (REV) .

#### **§163. Subpoena, summons, warrant or court order**

**1. Service.** A financial institution authorized to do business in this State or credit union authorized to do business in this State shall disclose financial records under section 162 pursuant to a subpoena, summons, warrant or court order that on its face appears to have been issued upon lawful authority only if the subpoena, summons, warrant or court order is served upon the customer prior to disclosure by the financial institution or credit union. The agency or person requesting the disclosure of financial records shall certify in writing to the financial institution or credit union the fact that the subpoena, summons, warrant or court order has been served upon the customer. The court for good cause shown may delay or dispense with service of the subpoena, summons, warrant or court order upon the customer. The court shall delay or dispense with service of the subpoena, summons, warrant or court order upon the customer upon notice by the Attorney General, the Attorney General's designee or the District Attorney that service upon the customer would not be in the public interest. A subpoena, summons or warrant issued in connection with a criminal proceeding or state or federal grand jury proceeding, a request for information by the Department of Health and Human Services for purposes related to establishing, modifying or enforcing a child support order or a trustee process lawfully issued need not be served upon the customer. [2001, c. 262, Pt. B, §5 (amd); 2003, c. 689, Pt. B, §6 (rev) .]

PL 1977, Ch. 416, § (NEW) .  
PL 1985, Ch. 647, §2 (AMD) .  
PL 1997, Ch. 16, §1 (AMD) .  
PL 1997, Ch. 537, §2 (AMD) .  
PL 1997, Ch. 537, §62 (AFF) .  
PL 1999, Ch. 197, §1 (AMD) .  
PL 2001, Ch. 262, §B5 (AMD) .  
PL 2003, Ch. 689, §B6 (REV) .

#### **§164. Penalties**

**1. Violation.** Any officer or employee of a financial institution authorized to do business in this State, credit union authorized to do business in this State, affiliate or consumer reporting agency who intentionally or knowingly furnishes financial records in violation of this chapter commits a civil violation for which the superintendent may assess a civil penalty of not more than \$5,000 per violation. Any financial institution authorized to do business in this State or credit union authorized to do business in this State that intentionally or knowingly furnishes financial records in violation of this chapter or intentionally or knowingly allows an affiliate to furnish financial records in violation of this chapter commits a civil violation for which the superintendent may assess a civil penalty of not more than \$10,000 per violation. Any financial institution authorized to do business in this State or credit union authorized to do business in this State or any agent or employee of a financial institution or credit union making a disclosure of financial records in good-faith reliance upon the certificate of agency or person requesting the disclosure, that the provisions of section 163 requiring prior notice to the customer have been complied with, is not liable to the customer for the disclosures and is not liable for any civil penalties under this section. [2001, c. 262, Pt. B, §6 (amd) .]

**2. Inducing violation.** Any person who intentionally or knowingly induces or attempts to induce any officer or employee of a financial institution authorized to do business in this State, credit union authorized to do business in this State or consumer reporting agency to disclose financial records in violation of this chapter commits a civil violation for which the superintendent may assess a civil penalty of not more than \$10,000 per violation. [2001, c. 262, Pt. B, §6 (amd) .]

PL 1977, Ch. 416, § (NEW) .  
PL 1985, Ch. 647, §3 (AMD) .  
PL 1991, Ch. 824, §A11 (AMD) .  
PL 2001, Ch. 262, §B6 (AMD) .



## APPENDIX C

### IMPROVIDENT TRANSFERS OF TITLE

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#### Chapter 20: IMPROVIDENT TRANSFERS OF TITLE (HEADING: PL 1987, c. 699, @1 (new))

##### §1021. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.  
[1987, c. 699, §1 (new).]

**1. Dependent.** "Dependent," with respect to an elderly person, means wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, because the elderly person: [1987, c. 699, §1 (new).]

A. Suffers from a significant limitation in mobility, vision, hearing, emotional or mental functioning or the ability to read or write; or

[1987, c. 699, §1 (new).]

B. Is suffering or recovering from a major illness or is facing or recovering from major surgery.

[1987, c. 699, §1 (new).]

**2. Elderly person.** "Elderly person" means a person who is 60 years of age or older. [1987, c. 699, §1 (new).]

**3. Independent counsel.** "Independent counsel" means an attorney retained by the elderly dependent person to represent only that person's interests in the transfer. [1987, c. 699, §1 (new).]

**4. Less than full consideration.** "Less than full consideration," with respect to a transfer of property, means the transferee pays less than fair market value for the property or the transfer is supported by past consideration. [1987, c. 699, §1 (new).]

**5. Major transfer of personal property or money.** "Major transfer of personal property or money" means a transfer of money or items of personal property which represent 10% or more of the elderly dependent person's estate. [1987, c. 699, §1 (new).]

**6. Transfer.** "Transfer" does not include testamentary transfers, which are outside the scope of this chapter. [1989, c. 238, §1 (new).]

PL 1987, Ch. 699, §1 (NEW).

PL 1989, Ch. 238, §1,4 (AMD).

##### §1022. Undue influence

**1. Presumption.** In any transfer of real estate or major transfer of personal property or money for less than full consideration or execution of a guaranty by an elderly person who is dependent on others to a person with whom the elderly dependent person has a confidential or fiduciary relationship, it is presumed that the transfer or execution was the result of undue influence, unless the elderly dependent person was represented in the transfer or execution by independent counsel. When the elderly dependent person successfully raises the presumption of undue influence by a preponderance of the



evidence and when the transferee or person who benefits from the execution of a guaranty fails to rebut the presumption, the elderly dependent person is entitled to avoid the transfer or execution and entitled to the relief set forth in section 1024. [2003, c. 236, §1 (amd).]

**2. Confidential or fiduciary relationship.** For the purpose of this section, the transfer of property or execution of a guaranty is deemed to have been made in the context of a confidential or fiduciary relationship if the transferee or person who benefits from the execution of a guaranty had a close relationship with the elderly dependent person prior to the transfer or execution. Confidential or fiduciary relationships include the following: [2003, c. 236, §1 (amd).]

A. A family relationship between the elderly dependent person and the transferee or person who benefits from the execution of a guaranty, including relationships by marriage and adoption;

[2003, c. 236, §1 (amd).]

B. A fiduciary relationship between the elderly dependent person and the transferee or person who benefits from the execution of a guaranty, such as with a guardian, conservator, trustee, accountant, broker or financial advisor;

[2003, c. 236, §1 (amd).]

C. A relationship between an elderly dependent person and a physician, nurse or other medical or health care provider;

[1987, c. 699, §1 (new).]

D. A relationship between the elderly dependent person and a psychologist, social worker or counselor;

[1987, c. 699, §1 (new).]

E. A relationship between the elderly dependent person and an attorney;

[1987, c. 699, §1 (new).]

F. A relationship between the elderly dependent person and a priest, minister, rabbi or spiritual advisor;

[1987, c. 699, §1 (new).]

G. A relationship between the elderly dependent person and a person who provides care or services to that person whether or not care or services are paid for by the elderly person;

[1987, c. 699, §1 (new).]

H. A relationship between an elderly dependent person and a friend or neighbor; or

[1987, c. 699, §1 (new).]

I. A relationship between an elderly dependent person and a person sharing the same living quarters.

[1987, c. 699, §1 (new).]

When any of these relationships exist and when a transfer or execution is made to a corporation or organization primarily on account of the membership, ownership or employment interest or for the benefit of the fiduciary or confidante, a fiduciary or confidential relationship with the corporation or organization is deemed to exist. [2003, c. 236, §1 (amd).]

PL 1987, Ch. 699, §1 (NEW).

PL 2003, Ch. 236, §1 (AMD).

### **§1023. Civil action; relief available**

**1. Civil action.** A civil action may be brought to obtain relief under this chapter by an elderly dependent person, that person's legal representative or the personal representative of the estate of an elderly dependent person. [2003, c. 236, §2 (amd).]

**2. Relief available; protected transfers and executions.** When a court finds that a transfer of property or execution of a guaranty was the result of undue influence, it shall grant appropriate relief enabling the elderly dependent person to avoid the transfer or execution, including the rescission or reformation of a deed or other instrument, the imposition of a constructive trust on property or an order enjoining use of or entry on property or commanding the return of property. When the court finds that undue influence is a good and valid defense to a transferee's suit on a contract to transfer the property or a suit of a person who benefits from the execution of a guaranty on that guaranty, the court shall refuse to enforce the transfer or guaranty. [2003, c. 236, §2 (amd).]

No relief obtained or granted under this section may in any way affect or limit the right, title and interest of good faith purchasers, mortgagees, holders of security interests or other 3rd parties who obtain an interest in the transferred property for value after its transfer from the elderly dependent person. No relief obtained or granted under this section may affect any

mortgage deed to the extent of value given by the mortgagee. [2003, c. 236, §2 (amd).]

**3. Statute of limitations.** The limitations imposed by Title 14, section 752, apply to all actions brought under this chapter. [1987, c. 699, §1 (new).]

PL 1987, Ch. 699, §1 (NEW).

PL 1989, Ch. 238, §2,4 (AMD).

PL 2003, Ch. 236, §2 (AMD).

#### **§1024. Other common law and statutory causes of action and relief still available**

Nothing in this chapter may be construed to abrogate any other causes of action or relief at law or equity to which elderly dependent persons are entitled under other laws or at common law. [1987, c. 699, §1 (new).]

PL 1987, Ch. 699, §1 (NEW).

#### **§1025. Title practices**

This chapter does not require that language showing compliance with this chapter be included in a deed and does not require that evidence of compliance with this chapter be recorded in the registry of deeds. Any attempt to record such evidence is void and has no effect on title. [1989, c. 238, §3 (new).]

PL 1989, Ch. 238, §3,4 (NEW).

<p style="text-align: center;"><b>APPENDIX D</b> <b>CUSTOMER FRAUD ALERT FORM (SAMPLES)</b></p>
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**CUSTOMER FRAUD ALERT WARNING**

**Before making this cash withdrawal ask yourself these questions:**

- Has anyone asked you to withdraw cash from your account to show good faith or to assist in an investigation?
- Have you been asked to withdraw cash to pay for goods or services prior to delivery?
- Is there a stranger / new acquaintance waiting outside in the lobby, outside the financial institution or at a designated location for this cash withdrawal?

If the answer is “**yes**” to any of these questions, you may be the victim of a fraud. You should report this to law enforcement immediately.

## **CUSTOMER CASH WITHDRAWAL/FRAUD ALERT FORM**

This form is provided as a customer service to alert you to the danger of **FRAUD**.

Con artists often trick their victims into withdrawing large sums of cash under false pretenses. Listed below are some common types of scams.

- Con artists sometime pose as financial institution or law enforcement officials. They ask victims to withdraw cash to help with their investigation. **NO FINANCIAL INSTITUTION OR LAW ENFORCEMENT OFFICIAL WILL MAKE SUCH A REQUEST.**
- Con artists may pose as home repair contractors or salesmen. They convince their victims they need certain repairs, service or product and ask for large cash down payments in advance. **MAKE SURE YOU ARE DEALING WITH A LEGITIMATE COMPANY BEFORE MAKING ANY PAYMENT.**
- Con artists are very convincing. If after reading this warning, you believe you may be the victim of a scam, you should notify law enforcement immediately.

I have read this Customer Cash Withdrawal / Fraud Alert Form and understand the precautions taken by \_\_\_\_\_ (Financial Institution) \_\_\_\_\_. However, I still request the immediate withdrawal, in cash, in the amount of \$ \_\_\_\_\_ from my account # \_\_\_\_\_.

Customer Name: \_\_\_\_\_

Customer Signature: \_\_\_\_\_

Bank Officer: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Branch: \_\_\_\_\_

**NON-DISCRIMINATION NOTICE**

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 1981, 2000d et seq.) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), and Title IX of the Education Amendments of 1972, (34 C.F.R. Parts 100, 104, 106 and 110), the Maine Department of Health and Human Services does not discriminate on the basis of sex, race, color, national origin, disability or age in admission or access to, or treatment or employment in its programs and activities.

Civil Rights Compliance Office, has been designated to coordinate our efforts to comply with the U.S. Department of Health and Human Services regulations (45 C.F.R. Parts 80, 84, and 91), the Department of Justice regulations (28 C.F.R. part 35), and the U.S. Department of Education regulations (34 C.F.R. Part 106) implementing these Federal laws. Inquiries concerning the application of these regulations and our grievance procedures for resolutions of complaints alleging discrimination may be referred to Civil Rights Compliance Office at 221 State Street, Augusta, ME 04333, Telephone number: (207) 287-2567 (Voice) or 207-287-4479 (TTY), or the Assistant Secretary of the Office of Civil Rights of the applicable department (e.g. the Department of Education), Washington, D.C.

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